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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Nicolas Aurio

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7590

01/26/2009

Nestle HealthCare Nutrition

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EXAMINER

KOSAR, AARON J

ART UNIT

PAPER NUMBER

1651

NOTIFICATION DATE

DELIVERY MODE

01/26/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/516,600	<b>Applicant(s)</b> AURIO ET AL.	
	<b>Examiner</b> AARON J. KOSAR	<b>Art Unit</b> 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 19-22,24-30,32,33,35-41 and 44-55 is/are pending in the application.
- 4a) Of the above claim(s) 19-21,29,38-41 and 44-55 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22,24-28,30,32,33,35-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's amendment and argument filed September 12, 2008 in response to the non-final rejection, are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed is herein withdrawn.

Applicant has amended the claims by introducing new claims 52-55. Claims 1-18, 23, 31, 34, 42 and 43 are canceled claims. Claims 19-22, 24-30, 32, 33, 35-41, and 44-55 are pending, of which claims 19-21, 29, 38-41, and 44-55 are withdrawn as being directed towards non-elected inventions/species. **Claims 22, 24-28,30, 32, 33, 35-37** are pending *and* have been examined on the merits to the extent of the elected invention/species (guar gum, collagen). Please note, to the extent that species other than the elected species are presented in the arguments below, said species are presented to demonstrate the non-allowability of the generic invention.

### ***Claim Objections***

**Claims 22, 24-28,30, 32, 33, 35-37** are objected to because of the following informalities:

The phrase "one or more viscous soluble fiber(s) and...protein(s)" appears to be an inadvertant variant/typographical error of the phrase "one or more viscous soluble fiber and...protein".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claim 33** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 33 is indefinite because the phrase “based on” is unclear. The phrase is unclear because it is unclear how a weight (e.g. the minimal feature(s)) is “based on” the total weight of the composition. Thus one would not be apprised as to the subject matter Applicant intends to embrace by the claim, thereby rendering the claim indefinite. Please note, however, this ground may be overcome by reciting, for example, “...10% by weight of the total weight of the composition.”

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 22, 26-28, 30, and 35-37** are/remain rejected under 35 U.S.C. 102(b) as being anticipated by BELL (A:PTO-892 3/26/07: US 6,210,686, of record).

The claims are generally directed to a composition comprising one or more viscous soluble fibers and one or more viscosity-lowering proteins. The dependent claims are further drawn to the form of the composition (a drink) and the source of fiber and/or protein.

BELL teaches cholesterol level effecting composition (column 3, lines 50-62) that comprises fibers, including  $\beta$ -glucan (column 1, lines 44-58; column 3, lines 50-53), and protein, including whey protein, egg, and soy protein (column 5, lines 34-41). Bell also teaches that the composition includes a variety of product forms, including as a beverage or another oral composition (column 6, lines 41-44; column 7, line 26). Bell teaches that  $\beta$ -glucan from yeast has advantages over other forms of fiber; that yeast  $\beta$ -glucan functions to improve serum

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cholesterol levels (column 3 lines 50-62); and that the invention may also comprise individual or several ingredients including multiple proteins or fibers (column 5, lines 5-62).

Though Bell is silent regarding the elected species, Bell is applicable in demonstrating the unpatentability of the generic invention over the prior art.

**Claims 22, 23, 26-28, 30, and 35-37** are/remain rejected under 35 U.S.C. 102(b) as being anticipated by JAUSSAN (AU 9873118 A, of record).

The general teachings of the claims are above. Additionally, the dependent claims are drawn to proportions/ratios of components and the rheological properties (viscosity) of the composition.

JAUSSAN teaches a diabetes-treating composition comprising a protein (from milk, whey, casein, soy, rice, pea, and/or oat protein (page 4, lines 28-33)) and a viscous soluble fiber (guar gum, xanthan gum, gum Arabic, pectin, and/or  $\beta$ -glucan (§5-6, page 3). Jaussan also teaches the composition has a viscosity of less than 500 mPa·s (1 Pa·s = 1 kg/m·s), including a composition having a viscosity of less than 0.04 kg/m·s, including 0.023 kg/m·s (§3, page 6; §1, page 9; §1, page 13) and blending the composition with water to form a liquid composition (pages 6-7). Jaussan teaches a composition having the 1.0 g soluble fiber (0.5g pectin or gum arabic per 100ml sample (page 4, line 26; examples 1 and 2) and 3.8 g per 100 mL casein:soy protein (1:1) (examples 1 and 2). Jaussan thus teaches a composition comprising a soluble fiber: (soy) protein ratio of between 0.01:1 and 20:1, by teaching a ratio of 0.26:1 (w/w) (0.5:1.9 = 0.26:1).

Though Jaussan is silent regarding the elected species of collagen, Jaussan is applicable in demonstrating the unpatentability of the generic invention over the prior art.

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**Claims 22, 25-27, 30, 33, 35, and 36** are/remain rejected under 35 U.S.C. 102(b) as being anticipated by SHIMIZU (US #6,589, 511, of record).

SHIMIZU teaches an orally administered (periodontal) composition comprising viscosity-modulating agents including the viscosity-increasing ingredients collagen and guar gum, including combining one or more of the members including collagen and guar gum (claim 12; column 4, ¶1). Shimizu also teaches that the viscosity-increasing agent (which includes the member guar gum) is from 0.05% to 10% by weight (claim 2).

**Claims 22, 25-27, 30, 33, 35, and 36** are/remain rejected under 35 U.S.C. 102(b) as being anticipated by LAUGHLIN (US #5,470,839, of record).

LAUGHLIN teaches an oral/enteric composition comprising guar (or gum arabic) and casein in the ratio of 0.15:1 (w/w) ( $7/45 = 0.15/1$ )(example, column 6-7). Laughlin also teaches the composition has a viscosity of 90cPs max (example, column 6-7).

**Claims 22-28, 30, 32, 33, and 35-37** are/remain rejected under 35 U.S.C. 102(b) as being anticipated by OHTA (EP 0323510, of record).

OHTA teaches a composition comprising a protein and fiber, including casein and carageenan in liquid form (page 5; figures 5 and 8). Ohta teaches that liquid form is maintained in contact with gastric juices when protein in the composition is below half as that of the fiber component (abstract; page 5 ¶1-2). Ohta teaches modifying the ratios of fiber:protein or 0.1:1 through 2:1 (example 5, page 12) . OHTA also teaches modifying pH and temperature to affect viscosity, including effecting a viscosity below 100cPs, including less than 50cPs (figure 1). Ohta also teaches the formulation of the composition for food for diabetic/glucose-intolerant patients (page 18).

**Claims 22, 26-28, 30, and 35-37** are/remain rejected under 35 U.S.C. 102(b) as being anticipated by HEATH (GB 2021948 A, of record).

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HEATH teaches a composition comprising guar gum and a protein coating including the use of casein, soy, or gluten in the coating (column 1; claims).

**Claims 22-28, 30, 32, 33, and 35-37** are/remain rejected under 35 U.S.C. 102(b) as being anticipated by MALLANGI (US 6355609 B1, of record).

MALLANGI anticipates the claims by teaching a nutritional composition comprising fiber and protein, including guar gum and hydrolyzed whey protein (for example table 1; claims 1-23, especially 10, 18, 19, and (“enteral *solution*”) claim 20). Mallangi also teaches component proportions, that the compositions have viscosity, and that the compositions have use in nutritional/enteric compositions and in the range of guar gum:protein of approximately 0.01-10% ((0.25%-1.0%): (10-25%)) of the caloric content of the composition (column 3, *Detailed Description*, ¶3; Experiment No. 1; claims).

### ***Claim Rejections - 35 USC § 102/103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

*This application currently names **joint inventors**. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).*

**Claims 22, 24-28, 30, 32, 33, and 35-37** are rejected under 35 U.S.C. 102(b) as anticipated by (to the extent *supra*) or, in the alternative, under 35 U.S.C. 103(a) as obvious over BELL, JAUSSAN, SHIMIZU, LAUGHLIN, OHTA, HEATH, or MALLINGI (of record, herein referred to collectively as “BELL, JAUSSAN, et al”).

The cited reference discloses a composition comprising components (including for example beta-glucan, whey protein, etc. and combinations thereof) which appear to be identical to the presently claimed composition since the compositions contain the same minimally-required chemical compounds. Consequently, the claimed composition appears to be anticipated by the references.

In the alternative, even if the compositions (with respect to a particular viscosity/viscosity range, or “about” a particular percent or viscosity) is not identical to the referenced composition, with regard to some unidentified characteristics, the differences between that which is claimed and that which is disclosed, is so slight that the referenced composition is likely to inherently possess the same characteristics of the claimed composition, particularly in view of the similar characteristics which they have been shown to share (e.g. the component chemical features in combination in the composition). Thus, the claimed composition would have been obvious to those of ordinary skill in the art within the meaning of 35 USC § 103(a).

Accordingly, the claimed invention as a whole was at least *prima facie* obvious, if not anticipated by the reference, especially in the absence of sufficient, clear, and convincing evidence to the contrary.

***Response to Arguments (35 USC 102 and 102/103)***

Applicant has argued that BELL, JAUSSAN, et al do not disclose a viscosity-lowering function/use of the protein. Applicant has also argued that BELL, JAUSSAN, et al do not recite the claimed viscosity or include additional components (e.g. inulin/hydrolysates). Applicant has argued that Laughlin may comprise casein, whey protein, etc. (remarks, page 16, ¶2) but that the



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components do not function in the manner of the viscosity-lowering components of the instant claims.

Applicant's arguments have been fully considered; however, they have been found to be not persuasive, for the reasons of record and those below.

Applicant discloses that "the hydrolysis..may occur *in vivo*, i.e. after ingestion of the composition" (Specification, page 4, lines 8-10) and the instant claims do not require a viscosity, but rather a mere desirable potential/ability to lower viscosity at room temperature.

Accordingly, wherein orally-administered compositions would hydrolyze in the oral cavity/stomach, the prior art compositions are still deemed to anticipate the instant claims. Still further, the claimed viscosity of "about 500 mPA•s", or an increased/decreased viscosity, or "about" a particular ratio or weight percent, absent a definition as to the limits of "about" or an objective line demarcating viscous versus non-viscous compositions viscosities, one may also broadly and reasonably interpret "about" 500 mPA•s to embrace a broad range of viscosities, including compositions with viscosities intrinsic to the compositions of the prior art.

In response to applicant's argument that the collagen, whey protein, egg protein, etc. of the prior art have use or functions other than the intended viscosity-lowering use/function, a recitation of the intended use of the claimed invention must result in a *structural difference* between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to Applicant's arguments that the viscosity is lowered prior to administration and thus fail to show certain features of applicant's invention, this is not found to be persuasive

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for the reasons above and because, the features upon which applicant relies (i.e., time of administration, criticality of some undisclosed viscosity, criticality of some undisclosed feature of the claimed component compounds, degree, mode, or minimal structural core feature of “moderately hydrolyzed” protein correlated to viscosity-lowering properties) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Please note, since the Office does not have the facilities for examining and comparing Applicants’ composition with the composition of the prior art, the burden is on applicant to show a novel or unobvious difference between the claimed product and the product of the prior art. See *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980), and “as a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith.” *In re Brown*, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972).

### **Claim Rejections - 35 USC § 103**

The relevant portion of 35 USC 103(s) is as presented above.

**Claims 22, 24-28, 30, 32, 33, and 35-36** are/remain rejected under 35 U.S.C. 103(b) as being anticipated by GUNTER (US 3,889,007) or WITTWER (US 4,478,658)

The general teachings of the claims are above.

GUNTER and WITTWER teach the components collagen and guar gum (e.g. gunter, claims 1 and 8; Wittwer, e.g. claims 6, 8). Whereas Gunter and Wittwer are silent with respect to a composition comprising both guar gum and collagen components, it would have been obvious to have provided a composition comprising both of the components, because collagen and guar gum were known individually in food/edible compositions. One would have been motivated to have combined guar gum and collagen because Gunter teaches that the components are useful for the same purpose as food organic binders and because Wittwer teaches that the components are useful as film-forming materials wherein “the film forming material may be selected from the group consisting of gelatin, collagen, cellulose, cellulose ethers and esters, modified and unmodified starches, substituted and unsubstituted polyvinyl acetate, polymers and co-polymers of acrylic acid and methacrylic acid, and their salts and esters, natural gums such as gum arabic, gum tragacanth, locust bean gum, guar gum, and mixtures of the above” (Wittwer, column 4/5). One would have had a reasonable expectation of success in making a composition comprising guar gum and collagen because success merely requires the contacting of known components in a known and predictable manner, and especially in the absence of objective evidence to the contrary or which would preclude the components from providing a composition to the extent instantly claimed.

Gunter is relied upon for the reasons discussed above. If not expressly taught by Gunter, based upon the overall beneficial teaching provided by this reference with respect the use of collagen/guar gum and the general benefit of optimizing the components of the food composition (which would directly or indirectly optimize the collagen/guar gum concentrations) in the manner disclosed therein - Gunter is deemed to have about the requisite features to the extent claimed or, in the alternative - the adjustments of particular conventional working conditions (e.g., determining one or more suitable concentration ranges in which to obtain a composition), is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was prima facie obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

**Claims 22, 24-28, 30, 32, 33, and 35-37** are/remain rejected under 35 U.S.C. 103(a) as being unpatentable over NAKAYAMA (US 6,287,623, of record).

NAKAYAMA teaches a drink composition comprising a protein and gelling agent (claims 9, 19, and 29), including a composition comprising casein and agar (example 8). Nakayama teaches the food and drink composition having a viscosity of not greater than 20 centipoise (20cPs = 20mPa·s)(claims 9,19,29). Nakayama also teaches using gelling agents, including guar gum; varying/adding amounts of gelling agent; and using one or more proteins, including collagen/gelatin (columns 3, 6, and 7). Nakamaya also teaches modifying the

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composition based on the desired end product. In particular, Nakamaya teaches (a) optimizing the protein content to effect the desired smoothness of the product, including optimizing protein to be between 0.1 to 10% by weight and further optimizing to between 0.5 and 7% protein by weight (column 4, ¶4; column 6, ¶6); (b) optimizing the amount of gelling agent, including 0.1-1.0% (agar) by weight (column 6, ¶ 2); (c) direct measurement or, as needed to reduce viscosity in more viscous samples, dispersion with (500mL) water of a gelling-agent-containing drink compositions (column 7, ¶1-3); and (d) a ratio of fiber (gelling agent) to viscosity-lowering protein (protein) of 0.06:1 (see column 14, example 8: casein/agar =  $0.26/3.6 = 0.06/1$ ).

To the extent that Nakayama is silent regarding the elected species combination of collagen and guar gum, it would have been obvious to one of skill to make a collagen-and-guar gum composition for the reasons below.

Please note that the terms that describe the species (e.g. guar gum) as a “gelling agent”, “viscosity-increasing agent”, “viscous, soluble fiber”, etc. presented below are relative descriptors of the intrinsic properties of each compound, such that, the compound (e.g. guar gum) is inseparable from its identity as a gelling agent, viscous soluble fiber, viscosity-increasing agent, etc.

Wherein Nakamaya teaches a liquid nutrient composition having protein and gelling agent comprising casein and agar (example 8), it would have been obvious to substitute the protein, casein, and gelling agent, agar, with collagen and guar gum, because Nakamaya teaches that any one or more proteins which may be used in food and drink may be used as the protein source, including collagen and/or casein(column 3, ¶1). Regarding the gelling agent, it would have been obvious to substitute agar with guar gum, because Nakamaya teaches that any suitable

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edible gelling agent may be used as the gelling agent source, including guar gum and/or agar (column 6, ¶3). One would have been motivated to substitute collagen and guar gum, because Nakamaya teaches a *finite* list of species of proteins/gelling agents, which includes collagen/guar gum, and because Nakamaya teaches that *any* one or more of these species may be used in the invention. One would have had a reasonable expectation of success in combining the compositions comprising collagen/guar gum, because Nakamaya teaches compositions comprising protein and gelling agent and because, absent evidence to the contrary, the success of the combination of the two components, including collagen and guar gum depends merely upon the independent properties as protein and gelling agent.

To the extent the claims are also drawn to the elected species of guar gum:collagen ratios and viscosity of guar gum and collagen comprising compositions, though Nakamaya is silent regarding the ratio of guar gum:collagen or the viscosity of the combination with this species, Nakamaya teaches the general benefit of varying the composition components which includes the benefit of enhancing the texture, taste, and feel of the compositions. Varying the component proportions would necessarily affect the viscosity of the composition and Nakamaya further teaches the benefit of producing a product which has a viscosity less than 20cPs has a desirable smoothness (column 7, ¶ 2) and effecting a variety of viscosities (liquids, jellies, etc) in product preparations (see examples 1-8).

Nakamaya is relied upon for the reasons discussed above. If not expressly taught by Nakamaya, based upon the overall beneficial teaching provided by this reference with respect reagent/component ratios and viscosity in the manner disclosed therein, the adjustments of particular conventional working conditions (e.g., determining the optimal ratios of components

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to effect a desirable viscosity), is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

From the teachings of the reference, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

Please note, since the Office does not have the facilities for examining and comparing Applicants' composition with the composition of the prior art, the burden is on applicant to show a novel or unobvious difference between the claimed product and the product of the prior art. *See In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980), and "as a practical matter, the Patent Office is not equipped to manufacture products by the myriad of processes put before it and then obtain prior art products and make physical comparisons therewith." *In re Brown*, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972).

### ***Response to Arguments***

Applicant has also argued that NAKAYAMA does not teach, suggest, or disclose all of the elements of the present claims and the reasons as argued for BELL, JAUSSAN, et al.

Applicant's arguments that the claims are not obvious over Nakayama are not persuasive, for the reasons of record in 35 USC 102 and in 35 USC 102/103, *supra*. In brief, Nakayama teaches that the composition comprises the minimally required components which appears to be

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identical or in the alternative obvious over the instantly claimed component chemicals/combinations.

Additionally, the arguments of record drawn to NAKAYMA are maintained, because a reference is good not only for what it teaches by direct anticipation but also for what one of ordinary skill in the art might reasonably infer from the teachings. (*In re Opprecht* 12 USPQ 2d 1235, 1236 (Fed Cir. 1989); *In re Bode* 193 USPQ 12 (CCPA) 1976). In light of the discussion of record (see above), the Examiner concludes that the subject matter defined by the instant claims, if not anticipatory, would have been obvious within the meaning of 35 USC 103(a).

From the teachings of the reference of Nakayama, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of objective evidence to the contrary or to the criticality of some undisclosed features.

No claims are allowed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. KOSAR whose telephone number is (571)270-3054. The examiner can normally be reached on Monday-Thursday, 7:30AM-5:00PM, ALT. Friday,EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Aaron Kosar/  
Examiner, Art Unit 1651

/Sandra Saucier/  
Primary Examiner, Art Unit 1651